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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,022	06/19/2003	Brent C. Gerberding	S63.2B-10964-US01	5691
60117	7590	11/12/2008		
RATNER PRESTIA P.O. BOX 980 VALLEY FORGE, PA 19482			EXAMINER GANESAN, SUBA	
			ART UNIT 3774	PAPER NUMBER
			MAIL DATE 11/12/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/600,022	<b>Applicant(s)</b> GERBERDING ET AL.	
	<b>Examiner</b> SUBA GANESAN	<b>Art Unit</b> 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 21-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 32-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 8/6/2008 have been fully considered but they are not persuasive. Applicant argues that the stent of Ventura lacks a peak-to-trough connection between adjacent serpentine bands. This is not persuasive. The serpentine band of Ventura is an undulating waveform with symmetric "peaks" and "troughs." The peaks and troughs are arbitrarily assigned as alternate portions of the waveform, although nothing structurally distinguishes a peak from a trough other than the designation of being at the top or bottom of a wave. Because the selection of a peak vs. a trough is arbitrary, Ventura discloses adjacent serpentine bands with peak-to-trough connections, because the designation of peak and trough need not be uniform in adjacent serpentine bands (although examiner contends that within each serpentine band, the peaks are all opposing troughs). Such a designation is not implied by the term "peak" or the term "trough" nor is it inherent in the definition of peak or trough.
2. Applicant further argues that Ventura lacks axially aligned and oppositely pointing apices. However, the claimed limitation "adjacent serpentine bands having axially aligned oppositely pointing apices" does not exclude the interpretation as adjacent serpentine bands, the bands being axially aligned and having oppositely pointing apices. Therefore Ventura discloses adjacent serpentine bands having axially aligned oppositely pointing apices.
3. Finally, applicant argues that Gladdish does not teach crimping a radiopaque marker onto a stent. However, Examiner considers the teaching of an interference fit for

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the radiopaque marker of Gladdish, to be a teaching for "crimping", since the radiopaque marker is squeezed or crimped into the housing.

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-4, 7, 9-13, 16-20, 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventura (2004/0044399), in view of Edwin et al (20020095205).

2. Ventura et al discloses radiopaque markers in combination with a stent comprising struts having serpentine bands, linear connector struts, and axially aligned apices. Ventura discloses marker placement at the connecting strut. Ventura is silent to the framework having an outer and inner covering of PTFE.

3. Edwin et al teaches the combination of a stent comprising a tubular framework having an outer surface and an inner surface and a plurality of interconnected struts, an outer covering of PTFE and an inner covering of PTFE, the outer covering extending along at least a portion of the outer surface of the expandable framework, the inner covering extending along at least a portion of the inner surface of the expandable framework, at least a portion of the inner and outer coverings being contiguous, the combination further comprising at least one radiopaque marker. See illustrations of figures 3-5 and corresponding supporting portions of the specification. To provide an inner and outer covering of ePTFE to the serpentine frame of Ventura et al to provide

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better compatibility and tissue response would have been obvious from the teachings of Edwin et al.

Regarding claims 2,3,4, 7, 10-13,20,32-36, see figures 3-5 and specification, paragraphs [0021-0027] of Edwin, et al.

Claims 16-19 see para 7 and 34 of Ventura

4. Claims 5-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventura (2004/0044399) in view of Edwin et al (20020095205) as applied above, and further in view of Gladdish, Jr. et al (20020193867).

Ventura in view of Edwin is explained supra. However, the references are silent as to whether the radiopaque marker band is crimped on to the stent, embedded in a portion of the stent framework, or a radiopaque plug inserted into an opening in the stent framework. Gladdish teaches crimping, embedding, and inserting a plug into an opening (fig 7 and para 25).

To apply the marker to the stent of Ventura in view of Edwin via crimping, embedding and inserting a plug into an opening as taught by Gladdish would have been obvious to one with ordinary skill in the art at the time the invention was made for the purpose of creating a secure connection of the radiopaque marker.

5. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventura (2004/0044399) in view of Edwin et al (20020095205) as applied above, further in view of Nolting et al (6488701).

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The use of stents for correcting cerebral vasculature is taught by Nolting, et al. If not inherent in Ventura et al ( The stent of Ventura et al is capable of being placed into a cranial vessel of any animal including rabbits, primates and elephants) and Edwin et al to employ a stent to correct aneurysm would have been obvious to one with ordinary skill in the art based on medical considerations.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUBA GANESAN whose telephone number is (571)272-3243. The examiner can normally be reached on M-F 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. G./

Examiner, Art Unit 3774

/William H. Matthews/

Primary Examiner, Art Unit 3774